Crooker v. *Hutchinson* (1824), 2 D. Chip. (Vt.) 117; *Eccles* v. *Stephenson* (1814), 3 Bibb (Ky.) 517. That the plaintiff continued to employ him after knowing of such negligent conduct, is evidence on the question of damages: *Derrickson* v. *Cady* (1847), 7 Pa. 27.

JOHN D. LAWSON.

Supreme Court of Pennsylvania.

BULLITT ET AL. v. BAIRD.

Error to the District Court for the City and County of Philadelphia.

READ, J., May 5, 1870. The defendants received for collection from King & Baird, a claim against F. Saler, St. Louis, Missouri, for which they gave a receipt in these words:—

"Philadelphia, May 24th, 1862. Received, to be forwarded for collection according to our discretion, and proceeds, when received by us, to be paid over to King & Baird. Against F. Saler, $3490.12. (Signed) Bullitt & Fairthorne, per Theo. D. Rand."

Written across the receipt were these words: "N. B. The owner of the within mentioned taking all risks of the mail, of losses by failure of agents to remit, and also of losses by reason of insurrection or war." This, it will be recollected, was during the rebellion, and when Missouri was often made the battle ground.

The claim was duly transmitted for collection to Clark & Allen, attorneys in St. Louis, who were proved to be proper and suitable persons for the purpose. Correspondence was duly kept up, and as late as June 21st, 1864, Clark & Allen wrote [that] they had no judgment in King & Baird v. Saler. On the 23d of August, 1864, one of the plaintiffs called and reported he had heard the money had been collected. Defendants immediately wrote to Clark & Allen, who replied, and stated the money had been collected, and promising to remit. This was communicated to the plaintiffs, who read the original letter from Clark & Allen. The defendants received a letter, dated "St. Nicholas Hotel, New York, September 6th, 1864." (This was Tuesday.) "Gentlemen:—I will be in your city this or the forepart of next week. The claim of King & Baird v. Saler has been paid, *i.e.*, compromised. Yours truly, Wm. Bliss Clark."

And also another letter, dated "New York, September 13, 1864" (also Tuesday). "Gentlemen:—I will not be in your city before Thursday night. Yours truly, Wm. Bliss Clark."

He never came, and the next news was that he had fallen dead in the street in St. Louis, utterly insolvent. The witness could not recollect whether he communicated these letters to the plaintiffs, or not.

The learned Judge, in his charge to the jury, said: "So far as negligence goes, I do not see anything but this information from New York, which was not communicated. The information that he was in New York, the letters written from there, and the fact that he did not come, as promised, do not appear to have been communicated. It is for you to say if there was negligence on the part of defendants in reference to this."

This, therefore, was the only negligence, if any, and the natural question is, if this information had been communicated, would it have saved the debt due by

Clark & Allen, or any part of it? From what we know, it would probably not have saved one dollar; and, therefore, the measure of damages stated in the plaintiff's print, and affirmed by the Court, which is in these words: "And the measure of damages is the amount received by said Clark, together with interest thereon, from the date of such receipt, unless reduced by the evidence offered by the defendants," is clearly erroneous, and the fourth assignment of error is sustained.

Judgment reversed and a *venire de novo* awarded.

Court of Appeals of New York.

STONE v. DRY-DOCK, E. B. & B. RY. CO.

Where a car driver so negligently drives in a city street as to run over a child of seven years of age, the jury should find whether child was capable of exercising sufficient judgment so as to be chargeable with contributory negligence.

The Court will decide that a child of very tender years has not sufficient judgment; but, from the nature of the case, it is impossible to prescribe a fixed period when a child has such sufficient judgment as to be guilty of contributory negligence. A nonsuit, on the ground of contributory negligence, is erroneous, and judgment below (opinion in 46 Hun. 184) is reversed.

Appeal from the Supreme Court, General Term, First Department. (46 Hun. 184.)

Adolph L. Sawyer, Esq., for appellant.

Messrs. Robinson, Scribner & Bright, for defendant.

ANDREWS, J., June 4, 1889. The nonsuit was placed on the ground that an infant, seven years of age, was *sui juris*, and that the act of the child, in crossing the street in front of the approaching car, was negligence on her part which contributed to her death, and barred a recovery. We think the case should have been submitted to the jury. The negligence of the driver of the car is conceded. His conduct in driving rapidly along Canal street at its intersection with Orchard street, without looking ahead, but with his eyes turned to the inside of the car, was grossly negligent: *Mangam* v. *R. R. Co.* (1868), 38 N. Y. 455; *R. R. Co.* v. *Gladmon* (1872), 15 Wall. (82 U. S.) 401.

It cannot be asserted, as a proposition of law, that a child, just passed seven years of age, is *sui juris*, so as to be chargeable with negligence. The law does not define when a child becomes *sui juris*: *Kunz* v. *City of Troy* (1887), 104 N. Y. 344.